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Federal Estate Taxation of Farm and Ranch Estates

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Federal Estate Taxation of Farm and Ranch Estates

— by Neil E. Harl*

Repeal of the federal estate tax (as well as the generation-skipping transfer tax) effective for deaths after 2009¹ and the “sunset” provisions specifying that “all provisions of, and amendments made by the [2001] Act shall not apply to . . . estates of decedents dying, gifts made or generation-skipping transfers after December 31, 2010”² have focused attention on the wisdom and the consequences of that part of the Economic Growth and Tax Relief Reconciliation Act of 2001.³

Justification for repeal

One of the most frequently cited reasons for repeal of the federal estate tax is the “. . . hardships that the tax inflicts on closely held family businesses and farms.”⁴ The data, however, do not support that frequently-made assertion.

Impact on farms. Data from federal estate tax returns (Form 706) filed in 2001 provide fairly clear evidence of the impact of the tax on farms and ranches.⁵ The data show that the largest amount of farm property subject to federal estate tax is held by decedents with taxable estates of \$20,000,000 or more.⁶

The number of estates subject to the federal estate tax has been quite modest in recent years.⁷ Of the roughly 2.3 million deaths in 2001, 51,841 incurred estate tax liability (approximately 2.2 percent of all deaths). In that year, \$23,532,542 was paid in federal estate tax which averaged about \$453,936 per estate.

Estates reporting farm property. Of the total number of taxable estates (51,841), 2601 decedents with taxable estates reported some farm property in 2001. That is 0.11 percent of all deaths. The number of estates in each tax bracket and the average amount of farm property are shown in Table 1.

Table 1. Average Value of Farm Property by Estate Tax Bracket

Tax Bracket	Number	Average Value of Farm Property
625,000—1,000,000	916	36,772
1,000,000—2,500,000	1,192	38,057
2,500,000—5,000,000	319	263,467
5,000,000—10,000,000	72	612,775
10,000,000—20,000,000	60	735,067
20,000,000 or more	44	3,389,841

IRS does not separately report farm real estate. Farm real estate is reported under the category of “Other Real Estate.”⁸ A report released by the Congressional Research Service

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farm real estate included in taxable estates in 2001 was estimated on June 9, 2003⁹ included an estimate of the amount of farm real estate included in the "Other Real Estate" category. Approximately \$1.6 billion of the assets reported in the "Other Real Estate" category is believed to be farmland. The estimate by CRS was that to total \$1,582,774,000 which is approximately 1.28 percent of all taxable estate value.¹⁰ Farm assets in total account for 1.6 percent of total taxable estate value.

The CRS conclusion was that "farm assets and business assets represent a relatively small share of total taxable estate value. And, most of the farm and business assets in the estate tax base are concentrated in estates valued at or above \$10 million."¹¹

As shown in Table 1, the 44 estates with taxable estates over \$20,000,000 reporting some farm property reported an average of \$3,389,841 in farm assets for federal estate tax purposes.¹² The \$10,374,200 average benefit of repeal to that group would likely result in a portion of that amount going into farm assets. *Over time, this would be expected to lead to a gradual increase in farm asset ownership by the very wealthy.* The proportion of land rented would be expected to rise as farmers would have an increasingly difficult time in competing for land ownership.

Tax paid by state. In confirming the fact that the big run-up in wealth in recent years has largely bypassed the agricultural sector, the data show that the average tax paid in 2001 in states that are heavily agricultural is dramatically lower than the more urban states.¹³

The bottom five states in terms of average federal estate tax paid in 2001 were Hawaii (\$209,267), Idaho (\$207,464), Iowa (\$196,403), West Virginia (\$179,379) and North Dakota (\$61,898).¹⁴

On the other hand, the federal estate tax paid in the top five states in 2001 averaged \$887,437 in Georgia, \$842,200 in the District of Columbia, \$829,823 in Connecticut, \$772,066 in New Hampshire and \$708,458 in Nevada.¹⁵

Who would benefit from repeal

The top 469 estates (those with taxable estates exceeding \$20,000,000) paid an average of \$10,374,200 each in federal estate tax in 2001.¹⁶ The top 1337 (those with taxable estates exceeding \$10,000,000 of taxable estate) paid an average of \$5,982,049 each.¹⁷ The top 3502 (those with estates exceeding \$5,000,000 in taxable estate) paid an average of \$3,515,461 each in federal estate tax.¹⁸ *That is a measure of tax benefit had the federal estate tax been repealed in 2001.* It is obvious what is really driving federal estate tax repeal.

In conclusion

Possible repeal of the federal estate tax and generation-skipping transfer tax is being played out against a backdrop of striking increases in concentration of wealth in recent years.¹⁹ Much of that increase in wealth has bypassed the farming sector.

The revenue loss from federal estate tax repeal would result in a shift of burden to other taxes, most notably the federal income tax. The income tax is a concern to a far greater segment of agriculture than the federal estate tax.

FOOTNOTES

¹ See Pub. L. No. 107-16, 115 Stat. 41 (2001).

² Pub. L. No. 107-16, 115 Stat. 150 (2001).

³ Pub. L. No. 107-16, *supra* note 1. See generally, 5 Harl, *Agricultural Law* § 43.01[3] (2003); Harl, *Agricultural Law Manual* § 5.01[5] (2003).

⁴ See, e.g., Lantz, Gurley and Linna, "Popular Support for the Elimination of Estate Taxes in the United States?" 99 *Tax Notes* 1263 (2003).

⁵ See <http://www.irs.org/taxstats/article/o,,id=96442,oo.html>, "Estate Tax Returns Filed in 2001: Gross Estate by Type of Property Deductions, Taxable Estate, Estate Tax and Tax Credits, by Size of Gross Estate," SOI Unpublished Data, April 2003, rev. August 2003.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Congressional Research Service, Report for Congress—Asset Distribution of Taxable Estates: An Analysis*, updated May 23, 2003.

¹⁰ *Id.*

¹¹ *Id.*

¹² See note 5 *supra*.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See Phillips, *Wealth and Democracy: A Political History of the American Rich* (2002).